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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,734

09/09/2003

Ed H. Frank

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EXAMINER

WIN, AUNG T

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

03/29/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/658,734	Applicant(s) FRANK ET AL.	
	Examiner AUNG WIN	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22 and 24-46.
Claim(s) withdrawn from consideration: 23.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Patrick N. Edouard/
Supervisory Patent Examiner, Art Unit 2617

/AUNG WIN/
Examiner, Art Unit 2617

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant argues Crosbie method, apparatus and system modified in view of Sharma does not teach according to that claims 1-22 and 24-46 since the combination of Crosbie and Sharma does not disclose or suggest at least the limitation of "receiving one or more polling message from an access device by one or more of a plurality of access points in hybrid wired/wireless local area network; responsive to said one or more polling message, communicating a load on said one or more of said plurality of access points to a switch" as recited in Applicant's claim 1. The reasons being
 - (1.1) Crosbie at least does not disclose or suggest "receiving one or more polling message from an access device by one or more of a plurality of access points in hybrid wired/wireless local area network" since Crosbie does not disclose that service request is a polling message.
 - (1.2) Crosbie does not disclose or suggest "communicating a load on said one or more of said plurality of access points to a switch"

Examiner disagrees. Crosbie discloses or suggests "receiving one or more polling message from an access device by one or more of a plurality of access points in hybrid wired/wireless local area network" because Crosbie's service request is a polling message. Crosbie's service request is a polling message since mobile device transmits service request message to access point in order to receive optimal load balancing information i.e., which access point is the less congested access point for the mobile to select for initiating communications or reestablishing communications [Crosbie: (0035-0047)]. Crosbie also discloses hybrid wired/wireless local area network [network connection 28 may be wired connection: (0034 & Figure 1)].

Applicant's arguments also fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references i.e., arguments regarding claimed polling message. During patent examination, the claims are given the broadest reasonable interpretation consistent with the specification. See *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). See MPEP § 2111 - § 2116.01 for case law pertinent to claim analysis.

Crosbie does not explicitly disclose or suggest "communicating a load on said one or more of said plurality of access points to a switch". However it would have been obvious to one of ordinary skilled in the art that roaming server 22 i.e., a switch which is connected to access points must be communicating each other in order to determine each access point's load to facilitate Crosbie's load balancing method and system. Sharma discloses base station controller which is connected to base stations queries base stations for capacity load information to facilitate load balancing [Column 5]. Therefore, it would have been obvious to one of ordinary skilled in the art at the time of invention was made would realize that modifying roaming server i.e., the switch to query connected access points for load information as taught by Sharma et al.'s load information querying method would teach "communicating a load on said one or more of said plurality of access points to a switch" as claimed.

It should be noted that applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

2. Applicant argues that Crosbie method, apparatus and system modified in view of Sharma does not teach according to that claims 1-22 and 24-46 since the combination of Crosbie and Sharma does not disclose or suggest the limitation "responsive to said one or more polling message, communicating a load on said one or more of said plurality of access points to a switch .." as recited in Applicant's claim 1. The reasons being
 - (2.1) Sharma still does not disclose or suggest "communicating a load on said one or more of said plurality of access points to a switch, wherein said switch determines optimal load balancing for said one or more of said plurality of access points based on said communicated load". According to Sharma, base stations communicate load to base station controller.

Examiner disagrees. As stated in office action, Crosbie discloses that "responsive to mobile service request message i.e., polling message received via access point, roaming server i.e., switch determines each access point loads and determines optimal load balancing for said one or more of said plurality of access points based on determined load. It would have been obvious to one of ordinary skilled in the art that roaming server 22 i.e., a switch which is connected to access points must be communicating each other in order to determine each access point's load to facilitate Crosbie's load balancing method and system.

Sharma discloses base station controller which is connected to base stations queries base stations for capacity load information to facilitate load balancing [Column 5]. Therefore, it would have been obvious to one of ordinary skilled in the art at the time of invention was made would realize that modifying roaming server i.e., the switch to query connected access points for load information as taught by Sharma et al.'s load information querying method would teach "responsive to said one or more polling message, communicating a load on said one or more of said plurality of access points to a switch .." and "communicating a load on said one or more of said plurality of access points to a switch, wherein said switch determines optimal load balancing for said one or more of said plurality of access points based on said communicated load".

It should be noted that applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

3. Applicant argues Crosbie method, apparatus and system modified in view of Sharma does not teach according to that claims 1-22 and 24-46 since the combination of Crosbie and Sharma does not disclose or suggest the limitation "said access device selects and reestablishes communication with one or more of said plurality of access points based on said communicated information of said

determined optimal load balancing" as recited in Applicant's claim 1. The reasons being (3.1) Crosbie and Sharma does not disclose or suggest "said access device selects and reestablishes communication with one or more of said plurality of access points based on said communicated information of said determined optimal load balancing".

Examiner disagrees. As stated in office action, mobile device communicating based on modified method and system selects and reestablishes communication with one or more of said plurality of access points based on said communicated information of said determined optimal load balancing i.e., which access point is the less congested access point for the mobile to select for initiating communications or reestablishing communications [Crosbie: (0035-0047)]. It should be noted that applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Therefore, applicant's arguments are not persuasive. .